

## Agricultural Marketing Service, USDA

Pt. 998

handler and any and all records of such handler with respect to the acquisition, movement, holding, processing or disposition of all peanuts which may be held or which may have been disposed of by the handler. Each handler shall maintain such records of peanuts received, held, and disposed of by the handler, that will substantiate any required reports and will show performance under this part. Such records shall be retained for at least two years beyond the crop year of their applicability.

[62 FR 1264, Jan. 9, 1997]

### § 997.54 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

[62 FR 1265, Jan. 9, 1997]

### ASSESSMENT RATES

#### § 997.101 Assessment rate.

On and after July 1, 1998, an administrative assessment rate of \$0.33 per net ton of assessable farmers stock peanuts received or acquired by each non-signatory first handler is established for peanuts.

[63 FR 41184, Aug. 3, 1998]

## PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

### DEFINITIONS

- Sec.
- 998.1 Secretary.
  - 998.2 Act.
  - 998.3 Person.
  - 998.4 Area.
  - 998.5 Peanuts.
  - 998.6 Producer.
  - 998.7 Handle.
  - 998.8 Handler.
  - 998.9 Crop year.
  - 998.10 Production areas.
  - 998.11 Area association.

### PEANUT ADMINISTRATIVE COMMITTEE

- 998.15 Establishment and membership.
- 998.16 Eligibility.
- 998.17 Term of office.
- 998.18 Initial committee.
- 998.19 Nomination.
- 998.20 Selection.
- 998.21 Failure to nominate.
- 998.22 Qualify by acceptance.
- 998.23 Alternate members.
- 998.24 Vacancies.
- 998.25 Compensation and expenses.
- 998.26 Procedure.
- 998.27 Powers.
- 998.28 Duties.

### MARKETING POLICY

- 998.30 Marketing policy.

### QUALITY REGULATION

- 998.31 Incoming regulation.
- 998.32 Outgoing regulation.
- 998.33 Inspection, certification and identification.
- 998.34 Modification.
- 998.35 Above parity situations.
- 998.36 Indemnification.

### REPORTS, BOOKS AND RECORDS

- 998.40 Confidential information.
- 998.41 Reports of acquisitions and shipments.
- 998.42 Other reports.
- 998.43 Records.
- 998.44 Verification of reports.

### EXPENSES AND ASSESSMENTS

- 998.47 Expenses.
- 998.48 Assessments.

### MISCELLANEOUS PROVISIONS

- 998.50 Rights of the Secretary.
- 998.51 Personal liability.
- 998.52 Separability.
- 998.53 Derogation.
- 998.54 Duration of immunities.
- 998.55 Agents.
- 998.56 Effective time.
- 998.57 Suspension or termination.
- 998.58 Procedure upon termination.
- 998.59 Effect of termination or amendment.
- 998.60 Counterparts.
- 998.61 Additional parties.

### IMPLEMENTING REGULATIONS

- 998.100 Incoming quality regulation for 1997 and subsequent crop peanuts.
- 998.200 Outgoing quality regulation for 1997 and subsequent crop peanuts.
- 998.300 Terms and conditions of indemnification for 1996 and subsequent crop peanuts.

### ASSESSMENT RATES

- 998.409 Assessment rate.

## § 998.1

AUTHORITY: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

SOURCE: 53 FR 20291, June 3, 1988, unless otherwise noted.

### DEFINITIONS

#### § 998.1 Secretary.

*Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

#### § 998.2 Act.

*Act* means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

#### § 998.3 Person.

*Person* means an individual, partnership, corporation, association, or any other business unit.

#### § 998.4 Area.

*Area* means all States with commercial production of peanuts and includes the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Tennessee, Missouri, Louisiana, Oklahoma, Texas, New Mexico, Arizona, and California.

#### § 998.5 Peanuts.

*Peanuts* means the seeds of the legume *arachis hypogaea* and includes both inshell and shelled other than those marketed by the producer in green form for consumption as boiled peanuts.

(a) *Farmers Stock*. *Farmers stock peanuts* means picked and threshed peanuts which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the form in which customarily marketed by producers.

(b) *Segregation 1*. *Segregation 1 peanuts* means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay.

## 7 CFR Ch. IX (1-1-01 Edition)

(c) *Segregation 2*. *Segregation 2 peanuts* means farmers stock peanuts with more than 2 percent but not more than 4 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(d) *Segregation 3*. *Segregation 3 peanuts* means farmers stock peanuts with more than 4 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold or decay.

(e) The definitions set forth in paragraphs (b), (c), and (d) of this section may be modified by the Secretary pursuant to § 998.34.

#### § 998.6 Producer.

*Producer* means any person engaged within the area in a proprietary capacity in the production of peanuts for sale.

#### § 998.7 Handle.

*Handle* means to engage in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce: *Provided*, That this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and *Provided further*, That this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

#### § 998.8 Handler.

*Handler* means any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling, and who is a party to this agreement.

#### § 998.9 Crop year.

*Crop year* is synonymous with *fiscal year* and means the 12-month period beginning with July 1 of any year and ending with June 30 of the following year.

## Agricultural Marketing Service, USDA

## § 998.18

### § 998.10 Production areas.

*Production areas* mean (a) The Southeastern Area consisting of the States of Alabama, Florida, Georgia, Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers.

(b) The Southwestern Area consisting of the States of Arizona, Arkansas, California, Louisiana, New Mexico, Oklahoma, and Texas.

(c) The Virginia-Carolina Area consisting of the States of Missouri, North Carolina, Tennessee, Virginia, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers.

### § 998.11 Area association.

*Area association* means for the Southeastern area, GFA Peanut Association, Camilla, Georgia; Southwestern area, Southwestern Peanut Growers Association, Gorman, Texas; and Virginia-Carolina area, Peanut Growers Cooperative Marketing Association, Franklin, Virginia.

#### PEANUT ADMINISTRATIVE COMMITTEE

### § 998.15 Establishment and membership.

A Peanut Administrative Committee (hereinafter referred to as committee) is hereby established to administer the terms and provisions of this agreement. Such committee shall consist of 18 members of whom 9 shall represent producers and 9 shall represent handlers. The producer representation shall be 3 for the Southeastern area, 3 for the Southwestern area, and 3 for the Virginia-Carolina area of which one of the 3 in each production area shall represent the respective area associa-

tion. The handler representation shall also be 3 for each of the designated areas. For each member there shall be an alternate member.

### § 998.16 Eligibility.

Each producer member of the committee and alternate member, shall be, at the time of his selection and during his term of office, a producer, or an officer or employee of an area association, in the area for which selected and shall cease to be a member or alternate upon engaging in the handling of peanuts either in a proprietary capacity or as a director, officer, or employee of other than a cooperative association. Each handler member of the committee, and his alternate, shall be, at the time of his selection, a handler or an officer or employee of a handler in the area for which selected and shall throughout his term of office so continue to be a handler.

### § 998.17 Term of office.

Members and alternate members of the committee shall serve for terms of 3 years ending on April 30 but initial members and alternates shall be selected for terms of 1, 2, or 3 years so that one-third of the producer and handler representatives in each area may be replaced each year. Each member and alternate member shall continue to serve until his successor is selected and has qualified.

### § 998.18 Initial committee.

The initial members of the committee and their respective alternates shall be as follows:

Southeastern area:

Producers	Member	Alternate member	Term of office years
Area Assn .....	D.H. Harden .....	W.G. Miller .....	3
At Large .....	James E. Mobley .....	T. Lewis Knox .....	2
At Large .....	Emmett Reynolds .....	Billy Newberry .....	1
Handlers	Member	Alternate member	
	Don W. Sands .....	Tom Chandler .....	3
	James Anderson .....	J.B. Roberts .....	2
	R.C. Singletary, Jr. ....	Robert Pender .....	1

Southwestern area:

**§ 998.19**

**7 CFR Ch. IX (1–1–01 Edition)**

Producers	Member	Alternate member	
Area Assn .....	Ross Wilson .....	B.D. Green .....	3
At Large .....	D.B. Warren .....	E.A. Walker .....	2
At Large .....	Barton Scott .....	Jesse Leach .....	1
Handlers	Member	Alternate member	
	John Haskins .....	Pat Cagle .....	3
	Melvin Shell .....	Ellis L. Ganey .....	2
	John Burroughs .....	R.L. Borden .....	1

**Virginia-Carolina area:**

Producers	Member	Alternate member	
Area Assn .....	S. Womack Lee .....	J.F. Turner, Sr .....	3
At Large .....	Joe S. Sugg .....	Minton Beach, Jr .....	2
At Large .....	Wm. V. Rawlings .....	G.B. Ligon .....	1
Handlers	Member	Alternate member	
	H.R. Birdsong .....	W.J. Spain, Jr. ....	3
	T.J. White .....	W.P. Woodley .....	2
	B.E. Parker .....	William D. Shaw .....	1

**§ 998.19 Nomination.**

Producers and handlers may nominate their successor representatives to those named in § 998.18 at meetings held in each area except that each area association representative shall be nominated by the association. The committee shall hold and shall give reasonable publicity to nomination meetings and may use the respective area associations to convene meetings of the producers. Only persons eligible to serve shall be eligible to vote. Each producer and each handler shall have but one vote, but a handler may vote in each production area in which he is a handler and if engaged in peanut production, may vote in his capacity as a producer. The person receiving the largest number of the votes cast for a position shall be the nominee. All nominations shall be certified by the committee to the Secretary no later than April 5 preceding the commencement of the term of office.

**§ 998.20 Selection.**

The Secretary shall select successor producer and handler members and alternate members of the committee in the numbers and with the qualifications specified in this agreement. Such selections may be made from the nominations certified by the committee or from other eligible producers and handlers.

**§ 998.21 Failure to nominate.**

In the event a nominee for any member or alternate member position is not certified pursuant to and within the time specified, the Secretary may select an eligible person to fill such position without regard to nomination.

**§ 998.22 Qualify by acceptance.**

Each person selected by the Secretary as a member or as an alternate member shall, prior to serving, qualify by filing with the Secretary a written acceptance as soon as practicable after being notified of such selection.

**§ 998.23 Alternate members.**

An alternate for a member shall act in the place and stead of such member:

- (a) During his absence, or
- (b) In the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and has qualified.

**§ 998.24 Vacancies.**

Any vacancy occasioned by the removal, resignation, disqualification, or death of any member or alternate, or any need to select a successor through failure of any person selected as a member or alternate member to qualify, and which is not recognized by the committee certifying to the Secretary

## **Agricultural Marketing Service, USDA**

## **§ 998.28**

a new nominee within 40 calendar days, may be filled pursuant to § 998.21.

### **§ 998.25 Compensation and expenses.**

The members of the committee, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses, actual or per diem as approved by the committee.

### **§ 998.26 Procedure.**

All decisions of the committee reached at an assembled meeting shall be by majority vote of the members present except that a change of a quality regulation shall require approval of 75 percent of the members. Meetings, or portions of meetings, concerned with marketing policy or quality regulation shall be open to all members of the peanut industry. All votes in an assembled meeting shall be cast in person and a quorum must be present for a valid decision. A quorum shall consist of not less than 50 percent of the producer members and 50 percent of the handler members. The committee may vote by mail or telegram upon due notice to all members, but any proposition so voted upon first shall be explained accurately, fully, and identically by mail or telegram, to all such members. When any proposition is submitted to be voted on by such method, one dissenting vote shall prevent its adoption. Failure of any member, or alternate acting for a member, to vote within a prescribed time shall be held to be a dissenting vote.

### **§ 998.27 Powers.**

The committee shall have the following powers:

(a) To administer the agreement in accordance with its terms and provisions;

(b) To receive, investigate, and report to the Secretary, complaints of violations of this agreement; and

(c) To recommend to the Secretary amendments to this agreement.

### **§ 998.28 Duties.**

The committee shall have the following duties:

(a) To act as intermediary between the Secretary and any producer or handler;

(b) To keep minutes, books, and other records which shall clearly reflect all of its acts and transactions and these shall be subject to examination by the Secretary at any time;

(c) To investigate and assemble data on the production, handling, and marketing of peanuts;

(d) To submit to the Secretary such available information with respect to peanuts as he may request and such other information as the committee may deem desirable and pertinent;

(e) To select from among its members a chairman and other officers and to adopt such by-laws for the conduct of its business as it may deem advisable;

(f) To appoint or employ such persons as it may deem necessary and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by a certified public accountant at least once each crop year and at such other times as the committee may deem necessary or as the Secretary may request, to submit two copies of each such audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(h) To prepare and submit to the Secretary quarterly statements of the financial operations of the committee and to make such statements together with the minutes of the meetings of said committee available for inspection at the offices of the committee by producers and handlers;

(i) To give the Secretary the same notice of meetings of the committee as is given to members;

(j) To investigate compliance with and to use means available to the committee to prevent violation of the provisions of this agreement; and

(k) To establish with the approval of the Secretary such rules and regulations as are necessary or incidental to administration of this agreement, as are consistent with its provisions, and as would tend to accomplish the purposes of this agreement and the act.

MARKETING POLICY

**§ 998.30 Marketing policy.**

Prior to May 31, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting and storage conditions, probable quality of crop, grading and treatment methods, inspection capability, demand for peanuts in domestic and foreign markets, the basis of handler indemnification, the probable assessable tonnage for the purposes of § 48 and such other factors as may have a bearing on the peanut quality regulation or the administration of this agreement. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

QUALITY REGULATION

**§ 998.31 Incoming regulation.**

No handler shall receive or acquire peanuts, either from a producer or other person, unless such peanuts were determined pursuant to § 998.33 to be Segregation 1 peanuts at time of receipt from the producer or, if received from another person, had not been mixed with peanuts of a lower quality than Segregation 1: *Provided*, That a handler may.

(a) Receive or acquire and deliver for seed purposes farmers stock peanuts with not more than 3 percent damaged kernels nor more than 10 percent moisture if such peanuts were produced under the auspices of a State agency which regulates or controls the production of seed peanuts;

(b) Acquire shelled peanuts from the Commodity Credit Corporation (CCC) or cleaned inshell or shelled peanuts from handlers subject to this agreement, or from buyers who have purchased such peanuts from such handlers or from CCC, if the lot has been

certified as meeting the requirements of § 998.32(a) and the identity is maintained;

(c) Perform services for an area association pursuant to a peanut receiving and warehouse contract; and

(d) If a crusher, acquire peanuts of a lower quality than Segregation 1 as oil stock upon such conditions as the committee, with the approval of the Secretary, may prescribe.

Segregation 2 peanuts which are wholesome relative to mold damage may be acquired from peanuts held by CCC or an area association when released by the Secretary as needed to fill demand. In the situation of § 998.35, the Secretary may authorize handlers to acquire Segregation 2 peanuts from producers or intermediaries. The acquisition of loose shelled kernels or their removal from farmers stock peanuts shall be in accordance with such procedures as the committee, with the approval of the Secretary, may establish.

**§ 998.32 Outgoing regulation.**

(a) No handler shall dispose of for human consumption, peanuts which fail to meet such U.S. grade requirements, or modifications thereof, or requirements as to wholesomeness as the committee, with the approval of the Secretary, may specify including the tolerance for moldy peanuts, time in storage, or other pertinent factors. No inspection certificate issued pursuant to § 998.33 shall be effective if unacceptable to the committee or for more than such period of time as the committee, with the approval of the Secretary, may prescribe. Peanuts which fail to meet the requirements specified pursuant to this section shall be disposed of by delivery to the Commodity Credit Corporation or in such manner as may be prescribed by the committee with the approval of the Secretary.

(b) Notwithstanding the restrictions contained in this section, and handler may transfer peanuts from one plant owned by him to another plant owned by him or to commercial storage without having an inspection made as provided for in § 998.33. No such transfers shall be made except in accordance with such procedures as the committee, with the approval of the Secretary, may prescribe for movement

## Agricultural Marketing Service, USDA

## § 998.42

within each production area, to another production area or to points outside thereof.

### **§ 998.33 Inspection, certification and identification.**

Each handler shall, at his own expense, prior to or upon receiving and before shipping or disposing of peanuts, cause an inspection to be made of any such peanuts not covered by a valid inspection certificate, to determine whether they meet the applicable grade requirements effective pursuant to this agreement and shall comply with such identification requirements as the committee, with the approval of the Secretary, may prescribe. Such handler shall obtain a certificate that such peanuts meet the aforementioned applicable requirements and all such certificates shall be available for examination or use by the committee. Acceptable certificates shall be those issued by Federal or Federal-State inspectors authorized or licensed by the Secretary.

### **§ 998.34 Modification.**

The requirements of §§998.31 and 998.32 and definitions set forth in §998.5, (b), (c), and (d) may be modified by the Secretary, upon recommendation of the committee or other information, whenever he finds that such modification would tend to effectuate the objectives of this agreement.

### **§ 998.35 Above parity situations.**

Minimum standards established under §§998.31 and 998.32, the grading and inspection requirements, and the provisions of this agreement relating to administration and indemnification shall continue in effect irrespective of whether or not the estimated season average price for peanuts is in excess of the parity level specified in section 2(1) of the Act.

### **§ 998.36 Indemnification.**

The committee shall, upon such terms and conditions as it may establish with the approval of the Secretary, indemnify any handler, to the extent specified, for losses incurred by him on peanuts which have been milled for sale for human consumption and which meet the applicable grade and other re-

quirements but which are determined by the committee or the U.S. Food and Drug Administration to be unsuitable for human consumption because of aflatoxin including such peanuts returned, resold or rejected to a handler by a purchaser. Any peanuts for which the handler is indemnified pursuant to this paragraph shall be delivered to the committee or disposed of as the committee may direct. Funds for such indemnification shall be obtained pursuant to §998.48. The period of indemnification on any crop may extend to December 31 of the calendar year following the year in which the crop was produced.

[53 FR 20294, June 3, 1988; 54 FR 227, Jan. 4, 1989]

## REPORTS, BOOKS AND RECORDS

### **§ 998.40 Confidential information.**

All reports and records furnished or submitted by handlers to the committee which include data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handlers or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such information to no person except the Secretary. Notwithstanding the above provisions of this section, information may be disclosed to the committee when reasonably necessary to enable the committee to carry out its functions under this agreement.

### **§ 998.41 Reports of acquisitions and shipments.**

Each handler shall file such reports of his acquisitions and shipments of peanuts, as may be requested by the committee.

### **§ 998.42 Other reports.**

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such other reports and information as are needed to enable the committee to perform its functions under this agreement.

## § 998.43

## 7 CFR Ch. IX (1-1-01 Edition)

### § 998.43 Records.

Each handler shall maintain such records of peanuts received, held and disposed of by him, as will substantiate any required reports and will show performance under this agreement. Such records shall be retained for at least 2 years beyond the crop year of their applicability.

### § 998.44 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this agreement, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where peanuts may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any peanuts so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all peanuts which may be held or which may have been disposed of by him.

## EXPENSES AND ASSESSMENTS

### § 998.47 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this agreement, determine to be appropriate.

### § 998.48 Assessments.

(a) Each handler shall pay to the committee, upon demand, with respect to peanuts received by him, including his own production, his pro rata share of all expenses, indemnification and other, which the Secretary finds are reasonable and likely to be incurred by the committee during each crop year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary per net ton of farmers stock peanuts received or acquired other than those peanuts described in § 998.31 (c) and (d). During a crop year the Secretary may not increase the rate of as-

essment to cover a deficit in the indemnification fund but may assess for a deficit in a subsequent year. An assessment rate may be increased to cover a deficit in the administrative fund.

(b) In order to provide funds to carry out the functions of the committee, the committee may borrow money or may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler.

(c) *Indemnification reserve.* The committee, with the approval of the Secretary, may establish and maintain during one or more crop years a monetary reserve in an amount approximating anticipated expenses for indemnification pursuant to § 998.36.

(d) *Refunds.* Administrative funds held by the committee at the conclusion of the crop year in excess of the crop year's expenses, other than indemnification funds, may be used to defray expenses for no more than the ensuing four months, and thereafter within a reasonable time the committee shall credit the aforesaid administrative excess to handlers who contributed to such excess: *Provided*, That the excess due any handler shall be applied, in whole or in part, by the committee to any outstanding obligation due the committee from such handler. Should any handler discontinue handling peanuts, such excess shall be refunded to him. A handler's share of such excess funds shall be the amount of such assessments he paid in excess of his actual pro rata share of the administrative expenses of the committee. Upon termination of this agreement any indemnification money in possession of the committee shall be turned over to any successor committee or disposed of, with the approval of the Secretary, for projects of benefit to the peanut industry and any residual together with any administrative money shall be distributed in such manner as the Secretary may direct: *Provided*, That, to the extent practicable, such residual funds shall be returned pro rata to the persons from whom collected.

## Agricultural Marketing Service, USDA

§ 998.58

### MISCELLANEOUS PROVISIONS

#### § 998.50 Rights of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

#### § 998.51 Personal liability.

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty.

#### § 998.52 Separability.

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

#### § 998.53 Derogation.

Nothing contained in this agreement is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

#### § 998.54 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence thereof.

#### § 998.55 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this agreement.

#### § 998.56 Effective time.

The provisions of this agreement, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 998.57.

#### § 998.57 Suspension or termination.

(a) *Failure to effectuate policy of act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this agreement, whenever he finds that such provisions do not tend to effectuate the declared policy of the act. Moreover, if the provisions of the CCC price support program relating to purchases from shellers are discontinued, or change appreciably, consideration shall be given to termination of this agreement.

(b) *Referendum.* The Secretary shall terminate, in accordance with section 8c(16)(B) of the Act, the provisions of this agreement at the end of any crop year whenever he finds that such termination is favored by a majority of the producers of peanuts who during the crop year have been engaged in the production of peanuts for market: *Provided*, That such majority have during such period produced for market more than 50 percent of the volume of such peanuts produced for market within the area, but such termination shall be effective only if announced on or before June 1 of the then current crop year.

(c) *Termination of Act.* The provisions of this agreement shall terminate, in any event, whenever the provisions of the act authorizing them cease to be in effect.

#### § 998.58 Procedure upon termination.

Upon the termination of this agreement, the members of the committee then functioning shall continue as

joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this agreement. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

**§ 998.59 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this agreement or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

- (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this agreement or any regulation issued thereunder, or
- (b) Release or extinguish any violation of this agreement or any regulation issued thereunder, or
- (c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

**§ 998.60 Counterparts.**

This agreement may be executed in multiple counterparts and, when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

**§ 998.61 Additional parties.**

After the effective date of this agreement, any handler may become a party hereto if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary and such party has complied with assessment obligations and the quality regulations applicable to the current crop. The benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting part.

IMPLEMENTING REGULATIONS

**§ 998.100 Incoming quality regulation for 1997 and subsequent crop peanuts.**

The following modify § 998.5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

(a) *Modification of § 998.5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of § 998.5 of the peanut marketing agreement are modified for the purposes of this section as to farmers stock peanuts to read respectively as follows:

(b) *Segregation 1. Segregation 1 peanuts* means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(c) *Segregation 2. Segregation 2 peanuts* means farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(d) *Segregation 3. Segregation 3 peanuts* means farmers stock peanuts with visible *Aspergillus flavus*.

(b) *Moisture and foreign material—(1) Moisture.* Except as provided under paragraph (d) of this section, no handler shall receive or acquire peanuts containing more than 10.49 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling. On farmers stock, such moisture determinations shall be rounded to the nearest whole number; on

shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(2) *Foreign material.* No handler shall receive or acquire farmers stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term *sand-screen* means any type of farmers stock cleaner which, when in use, removes sand and dirt.

(c) *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) *Seed peanuts.* A handler may acquire and deliver for seed purposes farmers stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus*, and, in addition, the following moisture content, as applicable:

(1) Seed peanuts produced in the Southeastern and Virginia-Carolina areas, may contain up to 10.49 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 11.49 percent moisture; and

(2) Seed peanuts produced in the Southwestern area may contain up to 10.49 percent moisture.

Any seed peanuts produced under the auspices of a State agency which contain up to 3 percent damaged kernels and are free from visible *Aspergillus flavus*, may be stored and shelled with Segregation 1 seed peanuts which are also produced under the auspices of the State agency. Any seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residuals not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose

operations include custom shelling may receive, custom shell, and deliver for seed purposes farmers stock peanuts, and such peanuts shall be exempt from the Incoming Quality Regulation requirements, and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and the handler shall report to the Committee, as requested, the weight of each lot of farmers stock peanuts received on such basis on a form furnished by the Committee. Handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts or from another producer or sheller may mill such residuals with other receipts or acquisitions of the handler, and such residuals which meet the Outgoing Quality Regulation requirements, may be disposed of by sale to human consumption outlets.

(e) *Oilstock.* Handlers may acquire for disposition to domestic crushing or export farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of § 998.31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified pursuant to § 998.34, to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire for crushing or export from other handlers peanuts originating from Segregation 2 or 3 farmers stock or the entire mill production of shelled peanuts from Segregation 1 farmers stock or lots of peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of § 998.200, Outgoing quality regulation, which failed to meet the requirements for human consumption pursuant to paragraph (a) of § 998.200, Outgoing quality regulation: *Provided*, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart. Handlers who acquire farmers

**§ 998.200**

**7 CFR Ch. IX (1-1-01 Edition)**

stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers stock peanuts and shelled peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

(f) *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer, or like person through whom the handler receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the

designated office of the handler and a copy to the Committee which shall be used only for information purposes.

(g) *Shelled peanuts.* Handlers may acquire shelled peanuts, which originated from "Segregation 1 peanuts," from other handlers, for remilling and subsequent disposition to human consumption outlets.

(h) Segregation 2 and Segregation 3 farmers stock peanuts held separate and apart or commingled, and disposed of to domestic or export crushing are exempt from assessments under this section.

[62 FR 1265, Jan. 9, 1997, as amended at 63 FR 2851, Jan. 16, 1998]

**§ 998.200 Outgoing quality regulation for 1997 and subsequent crop peanuts.**

The following modify or in addition to the peanut marketing agreement restrictions of §998.32 on handler disposition of peanuts:

(a) *Shelled peanuts.* (1) No handler shall dispose of shelled peanuts for human consumption unless such peanuts are positive lot identified, certified "negative" as to aflatoxin, and certified as meeting the following requirements:

**MAXIMUM LIMITATIONS**  
[Excluding lots of "splits"]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Runner .....	1.50	2.50	3.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen.	3.00%; 1 <sup>5</sup> / <sub>64</sub> × 3 <sup>3</sup> / <sub>4</sub> inch slot screen.	4.00% .....	.20	9.00
Virginia (except No. 2).	1.50	2.50	3.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen.	3.00%; 1 <sup>5</sup> / <sub>64</sub> × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia	1.50	2.50	3.00%; 1 <sup>5</sup> / <sub>64</sub> inch round screen.	3.00%; 1 <sup>5</sup> / <sub>64</sub> × 3 <sup>3</sup> / <sub>4</sub> inch slot screen.	4.00% Both screens.	.20	9.00
No. 2 Virginia .....	1.50	3.00	6.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen.	6.00%; 1 <sup>5</sup> / <sub>64</sub> × 1 inch slot screen.	6.00% Both screens.	.20	9.00
Runner with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen.	3.00%; 1 <sup>5</sup> / <sub>64</sub> × 3 <sup>3</sup> / <sub>4</sub> inch slot screen.	4.00% Both screens.	.20	9.00
Virginia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 1 <sup>7</sup> / <sub>64</sub> inch round screen.	3.00%; 1 <sup>5</sup> / <sub>64</sub> × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish & Valencia with splits (not more than 15% sound splits).	1.50	2.50	3.00%; 1 <sup>5</sup> / <sub>64</sub> inch round screen.	2.00%; 1 <sup>5</sup> / <sub>64</sub> × 3 <sup>3</sup> / <sub>4</sub> inch slot screen.	4.00% Both screens.	.20	9.00

## MAXIMUM LIMITATIONS—Continued

[Excluding lots of “splits”]

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign materials (percent)	Moisture (percent)
			Sound split and broken kernels	Sound whole kernels	Total		
Lots of "splits"							
Runner (not more than 4% sound whole kernels).	2.00	2.50	3.00%; <sup>17</sup> / <sub>64</sub> inch round screen.	3.00%; <sup>14</sup> / <sub>64</sub> × <sup>3</sup> / <sub>4</sub> inch slot screen.	4.00% Both screens.	.20	9.00
Virginia (not less than 90% splits).	2.00	2.50	3.00%; <sup>17</sup> / <sub>64</sub> inch round screen.	3.00%; <sup>14</sup> / <sub>64</sub> × 1 inch slot screen.	4.00% Both screens.	.20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).	2.00	2.50	3.00%; <sup>16</sup> / <sub>64</sub> inch round screen.	3.00%; <sup>13</sup> / <sub>64</sub> × <sup>3</sup> / <sub>4</sub> inch slot screen.	4.00% Both screens.	.20	9.00

(2) The term *fall through*, as used in this paragraph, shall mean sound split and broken kernels and whole kernels which pass through specified screens.

(b) *Cleaned inshell peanuts*. No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption:

(1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as “USDA laboratory”) and found to be wholesome relative to aflatoxin;

(2) with more than 2.00 percent peanuts with damaged kernels;

(3) with more than 10.00 percent moisture; or

(4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Sampling and testing shelled peanuts*. (1) Prior to shipment, each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection

Service as “Sample #1,” “Sample #2,” and “Sample #3” and each sample shall be placed in a suitable container and “positive lot identified” by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a “subsampling mill” approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as “Subsample 1-AB” and at the handler’s or buyer’s option, a second subsample may also be extracted from Sample #1. It shall be designated as “Subsample 1-CD.” Subsample 1-CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1-AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1-AB and 1-CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice

covering each lot shall be sent to the Committee office.

(2) The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2-AB." Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3-AB." Subsamples 2-AB and 3-AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2-AB and 3-AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

(3) All costs involved in sampling and testing Subsample 1-CD shall be for the account of the buyer of the lot and at the buyer's expense. However, if the handler elects to pay any portion of these cost the handler shall charge the buyer accordingly. Aflatoxin sampling and testing cost for the AB subsamples shall be included as a separate item in the handler's invoice to the buyer at the rate of \$0.0027 per pound or \$0.27 per hundredweight of the peanuts covered by the invoice. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the han-

dler, who shall promptly cause notice to be given to the buyer of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(4) For the current crop year, "negative" aflatoxin content means 15 parts per billion (ppb) or less for peanuts which have been certified as meeting edible quality grade requirements as determined by the Committee's sampling plan applicable to the respective grade categories.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts, in lot sizes not exceeding 200,000 pounds, shall be identified by positive lot identification procedures prior to being shipped or otherwise disposed of. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot which has been inspected so that there can be no doubt that the peanuts are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except those lots which have been reconstituted and/or commingled at the request of the receiver. All such reconstituted and/or commingled lots will no longer be considered positive lot identified and, therefore, no longer be eligible for indemnification or for appeal inspection. Handlers shall keep and

maintain records of the quantities involved in each reconstituting and/or commingling procedure, whether in single or multiple lots, and such records shall be available to the Committee on request.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Further modification of § 998.32.* (1) The provisions of § 998.32(a) restricting the disposition of peanuts which fail to meet the requirements specified heretofore in this section to the Commodity Credit Corporation or in such manner as may be prescribed by the Committee with the approval of the Secretary, is hereby modified to specify that only peanuts which have been certified as meeting the requirements specified in paragraphs (a) or (b) of this section, which have been sampled pursuant to paragraph (c) of this section, and which have been identified pursuant to paragraph (d) of this section are eligible for disposition to human consumption outlets.

(2) Lots of peanuts which have not been certified as meeting the requirements for disposition to human consumption outlets, may be disposed for non-human consumption uses which are not regulated or limited by the provisions specified hereinafter in this section: *Provided*, That each such lot is positive lot identified, using red tags, and certified as to aflatoxin content (actual numerical count). However, on the shipping papers covering the disposition of each such lot of inedible quality peanuts, the handler shall cause the following statement to be shown: "The peanuts covered by this bill of lading (or invoice, etc.) are not to be used for human consumption."

(3) Except for inedible quality peanuts disposed of under the provisions of paragraph (f)(2) of this section and peanuts derived from the milling for seed of Segregation 2 and 3 farmers stock peanuts, peanuts which have not been certified as meeting the standards set

forth in paragraphs (a) or (b) of this section shall be disposed of as prescribed hereinafter in this section.

(g) *Sheller oil stock residuals—for crushing or export.* Peanuts and portions of peanuts which are separated from edible quality peanuts by screening or sorting or other means during the milling process, may be segregated into categories or commingled as sheller oil stock residuals. Such sheller oil stock residuals shall be identified pursuant to paragraph (d) of this section, but using a red tag, and such peanuts may be disposed of domestically or to the export market in bulk or bags or other suitable containers. Disposition to crushing may be to handlers who are crushers or to domestic crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of this paragraph and all other applicable requirements of the Agreement. The movement of such peanuts shall be reported to the Committee by the shipping handler and the crusher, as requested by the Committee.

(1) If the peanuts have not been tested and certified as to aflatoxin content, as prescribed in paragraph (c) of this section, the handler shall cause the following statement to be shown on the shipping papers: "The peanuts covered by this bill of lading (or invoice, etc.) are limited to crushing only and may contain aflatoxin."

(2) If the peanuts are certified as 301 ppb or more aflatoxin content, disposition shall be limited to crushing or export.

(h) *Blanching and remilling peanuts failing quality requirements.* (1) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements of paragraph (a) of this section. Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into

human consumption outlets, such peanuts after blanching, must meet specifications as listed in paragraph (a) of this section and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Lots of peanuts which have been certified as meeting fall through requirements as specified in paragraph (a) of this section, prior to blanching, shall be exempt from fall through requirements after blanching. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(2) Handlers may contract with Committee approved remillers for remilling shelled peanuts, which originated from Segregation 1 peanuts, that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of this section: *Provided*, That such lots of peanuts contain not in excess of 10 percent fall through. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified and the title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a) of this section, and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions

may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or, in the alternative, such residuals shall be positive lot identified by the Federal or Federal-State Inspection Service, and shall be disposed of, by the remiller, to handlers who are crushers, or to crushers who are not handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(3) Handlers may contract with Committee approved blanchers for roasting positive lot identified shelled peanuts, which originated from Segregation 1 peanuts, that meet the grade requirements of paragraph (a) of this section but are positive as to aflatoxin. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and a valid aflatoxin certificate. To be eligible for disposal into human consumption outlets, such peanuts after roasting, shall have had the positive lot identity maintained and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from roasting under these provisions, shall be placed in suitable containers acceptable to the Committee and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition; or in the alternative, such residuals shall be positive lot identified by a Federal or Federal-State Inspection Service, and shall be disposed of, by the blancher, to handlers who are crushers, or to crushers who are not

handlers under the Agreement only on the condition that they agree to comply with the terms of paragraph (g) of this section and all other applicable requirements of the Agreement. Roasting under the provisions of this paragraph shall be performed only by blanchers who are approved by the Committee.

(i) *Documentation of compliance.* Each handler shall keep and maintain records of all receipts and acquisitions and all milling, remilling, blanching, use and disposition of peanuts which have not been certified as meeting the requirements for disposition to human consumption, pursuant to paragraph (a) or (b) of this section, as will document and substantiate compliance and performance under this agreement.

[62 FR 1266, Jan. 9, 1997, as amended at 63 FR 2851, Jan. 16, 1998; 63 FR 33243, June 18, 1998; 63 FR 41323, Aug. 3, 1998; 64 FR 56135, Oct. 18, 1999]

**§ 998.300 Terms and conditions of indemnification for 1996 and subsequent crop peanuts.**

(a) For the purpose of paying indemnities on a uniform basis pursuant to § 998.36 of the peanut marketing agreement, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled into one of the categories listed in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200) or paragraph (j) of this section, on which the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of further chemical assay, after shipment.

(b) To be eligible for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements for Indemnifiable Grades as specified in paragraph (a) of the *Outgoing quality regulation* (7 CFR 998.200), shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the *Outgoing quality regulation* (7 CFR 998.200) and the lot identification shall have been maintained. If the Committee concludes, based on further assays, that the lot is so high in

aflatoxin that it should be handled pursuant to this section, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification.

(c) The indemnification payment shall be transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the *Outgoing quality regulation* (7 CFR 998.200).

(d) Claims for indemnification may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay such claims as it determines to be valid, to the extent of the equivalent indemnification value applicable to the peanuts used in the product so withheld. On products manufactured from edible quality grades of peanuts, such claims may be filed with the Committee no later than November 1 of the second year following the year in which the peanuts were produced.

(e) Notice of claims for indemnification on peanuts of the current crop year shall be received by the Committee (by mail or legible facsimile) no later than the close of the business day on November 1, following the end of the crop year. For the purpose of this paragraph, "notice" shall be defined as the covering (executed and signed) Form PAC-5, accompanied by a copy of the applicable valid grade inspection certificate and the lab certificate showing the aflatoxin assay results which caused the request for rejection.

(f) Each handler shall include, directly or by reference, in the handler's sales contract, the following provisions:

(1) Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an "appeal" inspection for aflatoxin. Results of the "appeal" inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the "appeal" sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller. Buyer must return the rejected lot to the seller within 45 days of the date on which Committee management informs buyer of the "appeal" sample test results, otherwise the buyer agrees that he/she forfeits the right to reject the lot and return it to the seller.

(2) Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the assay to the buyer. A portion of the costs of aflatoxin sampling and testing, as provided in §998.200(c)(3), shall be for the account of the buyer and the buyer agrees to pay such costs.

(g) Any handler who fails to include such provisions in his/her sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

(h)(1) Any handler who fails to conform to the requirements of paragraph (g) of the *Incoming quality regulation* (7

CFR 998.100) shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

(2) Any handler who fails to comply with the requirements of paragraph (h)(1) or (h)(2) of the *Outgoing quality regulation* (7 CFR 998.200) shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(i) Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the *Outgoing quality regulation* (7 CFR 998.200), shall be ineligible for any indemnification payments until such non-compliance is corrected to the satisfaction of the Committee.

(j) Categories of cleaned inshell peanuts eligible for indemnification are as follows:

(1) Cleaned inshell peanuts <sup>1</sup>

(i) U.S. Jumbos

(ii) U.S. Fancy Handpicks

(iii) Valencia-Roasting Stock <sup>2</sup>

(2) [Reserved]

(k) The indemnification value for peanuts indemnified shall be 35 cents per pound.

[61 FR 55549, Oct. 28, 1996]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g., sections .200 through .299) and "Handling" regulations (e.g., sections .300 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

<sup>1</sup>Eligible lots of cleaned inshell peanuts which are found, after shipment, to contain excessive aflatoxin, may be rejected to the handler. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border reentry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be the extent of the indemnification payment.

<sup>2</sup>Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

## Agricultural Marketing Service, USDA

## § 999.1

### ASSESSMENT RATES

#### § 998.409 Assessment rate.

On and after July 1, 1998, an administrative assessment rate of \$0.33 per net ton of farmers stock peanuts received or acquired other than those described in § 998.31 (c) and (d) is established for handlers signatory to the Agreement. Assessments are due on the 15th of the month following the month in which the farmers stock peanuts are received or acquired.

[63 FR 41184, Aug. 3, 1998]

### PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

#### Sec.

- 999.1 Regulation governing the importation of dates.
- 999.100 Regulation governing imports of walnuts.
- 999.200 Regulation governing the importation of prunes.
- 999.300 Regulation governing importation of raisins.
- 999.400 Regulation governing the importation of filberts.
- 999.500 Safeguard procedures for walnuts and certain dates exempt from grade, size, quality, and maturity requirements.
- 999.600 Regulation governing imports of peanuts.

AUTHORITY: 7 U.S.C. 601-674; 7 U.S.C. 1445c-3, and 7 U.S.C. 7271.

#### § 999.1 Regulation governing the importation of dates.

(a) *Definitions.* (1) *Dates in retail packages* means whole or pitted dates, other than dates prepared or preserved, wrapped or packaged for sale at retail.

(2) *Dates for packaging* means whole or pitted dates in bulk containers which are to be repacked, in whole or part, in the United States as dates in retail packages.

(3) *Bulk container* means any container of dates which, together with the dates therein, weighs more than ten pounds.

(4) *Dates for processing* means any dates for use in a bakery, confectionery, or other product and includes dates coated with a substance materially altering their color.

(5) *Dates prepared or preserved* means dates processed into a confection or other product, dates coated with a sub-

stance materially altering their color, or dates prepared for incorporation into a product by chopping, slicing, or other processing which materially alters their form.

(6) *Person* means any individual, partnership, corporation, association, or other business unit.

(7) *Fruit and Vegetable Division* means the Fruit and Vegetable Division of the Consumer and Marketing Service, United States Department of Agriculture, Washington, DC 20250.

(8) *USDA inspector* means an inspector of the Processed Products Standardization and Inspection Branch, Fruit and Vegetable Division or any other duly authorized employee of the USDA.

(9) *Inspection certificate* means a written statement or memorandum report issued by a USDA inspector setting forth in addition to appropriate descriptive information the quality and condition of the product inspected, and in the case of imported dates, a statement of meeting or failing, as applicable, the U.S. import requirements under section 8e of the AMA Act of 1937.

(10) *Importation* means release from custody of United States Bureau of Customs.

(b) *Grade requirements.* (1) Except as provided in paragraph (d) of this section, the importation into the United States of any lot of dates for packaging or dates in retail packages is prohibited unless the dates are wholesome and unadulterated and meet the following grade requirements which are determined to be comparable to those imposed upon domestic dates handled pursuant to Order No. 987, as amended (part 987 of this chapter: The whole or pitted dates in the lot are of one variety, and are of such quality and condition that upon inspection on the basis of a representative sample thereof, with hydration (of the sample) in accordance with good commercial practice or without any hydration, the dates possess a reasonably good color, are reasonably uniform in size, are reasonably free from defects, possess a reasonably good character, and score not less than 80 points when scored in